

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 FREMONT STREET, 21ST FLOOR
SAN FRANCISCO, CALIFORNIA 94105

FINAL STATEMENT OF REASONS

File No. RH-395

Notice publication date: January 26, 2001

Notice of Availability of Changed Text: April 13, 2001

Submitted for filing May 25, 2001

Resubmitted for filing August 10, 2001

SLAVERY ERA INSURANCE POLICIES

INTRODUCTION

California Insurance Commissioner Harry W. Low (“Commissioner”) proposes the adoption of Title 10, Chapter 5, Subchapter 3, Article 7.3, Sections 2393 through 2398, California Code of Regulations (CCR), regarding the Slavery Era Insurance Policies Registry. The proposed regulations would implement, interpret and make specific the provisions of California Insurance Code Sections 13810, 13811, 13812 and 13813. The proposed regulations define the terms “insurer”, “predecessor corporation”, “reporting insurer”, “slave”, “slaveholder”, “slaveholder insurance policies” and “Slavery Era”.

The Commissioner initially notified the public of the proposed adoption of Slavery Era Insurance Policy Registry regulations on January 26, 2001. A Notice of Proposed Regulatory Action and Notice of Public Hearing, an Initial Statement of Reasons and the text of the proposed regulations were mailed to affected carriers and interested parties on January 26, 2001. Public hearings were conducted on March 13 and 16, 2001 in Los Angeles and San Francisco, respectively, for the purpose of receiving public comment on the proposed regulations.

On April 13, 2001, the Commissioner issued a Notice of Availability of Changed Text, indicating that changes to the proposed regulations had been made pursuant to public comments that were received during the initial, 45-day public comment period. Interested parties were invited to submit additional comments on the text of the regulations until 4:30 p.m., on May 1, 2001.

On July 20, the Commissioner issued a second Notice of Availability of Changed Text, indicating that changes to the proposed regulations had been made pursuant to public comments that were received during the previous 15-day public comment period. Interested parties were invited to submit additional comments on the text of the regulations until 4:30 p.m., on August 6, 2001.

California Insurance Code Sections 13810 through 13813, regarding Slavery Era insurance policies, was signed by the Governor on September 30, 2000 and became effective on January 1, 2001. The law provides that every insurer doing business in California that issued insurance policies to slaveholders, either directly or via a predecessor company, must report specified data to the Department regarding all such policies, including the names of slaves and names of slaveholders contained in its records. The law provides that the information contained in the reports will be made available to the public.

UPDATED INFORMATIVE DIGEST

The Commissioner has proposed the adoption of Title 10, Chapter 5, Subchapter 3, Article 7.3, Sections 2393 through 2398. The purpose of these regulations is to implement, interpret and make specific provisions of the California Insurance Code, including but not limited to, sections 13810, 13811, 13812 and 13813. These regulations will establish definitions for critical terms used throughout the statutes and will set forth guidelines for the gathering and reporting of the information and records required therein.

Pursuant to comments received during the initial 45- day public comment period, the Commissioner has amended the regulations as initially proposed to clarify the following issues:

- (1) that carriers doing business in California on or after January 1, 2001 must comply with the regulations;
- (2) that the term “slaveholder” includes owners of business enterprises using slaves; (3) that the term “slaveholder insurance policies” includes policies issued for the benefit of slaveholders;
- (3) that the term “slavery era” means the period in time prior to 1865;
- (4) that carriers should report, along with the names of slaves, the name(s) of slaveholders, beneficiaries and/or policyholders and
- (5) that insurers shall provide copies of all records and documents (not the originals).

Pursuant to comments received during the 15-day public comment period which commenced July 20, 2001, the Commissioner amended to regulations to clarify the following issues:

- (1) that “insurers” are defined, for the purposes of the regulation, as being “licensed and” doing business in California on or after January 1, 2001 and
- (2) the content of Circular SEIR-2001 (the Department’s Electronic Format for reporting Slavery Era Insurance Policy information) was made available to the public.

The Commissioner has reviewed the public comments received during this 15-day comment period and has determined to make the following non-substantial changes to the regulation:

- (1) The term “slavery era” is further clarified to be “prior to December 5, 1865” and
- (2) insurance policies as referred to in the “Experience Period” portion of Circular SEIR-200 have been further clarified to be policies which were “issued or written” prior to December 5, 1865.

DESCRIPTION OF THE PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT EACH SECTION IS INTENDED TO ADDRESS, SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION AND SUBPART

The specific purpose of each regulation and the rationale for the determination that each regulation is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each regulation is intended to address is set forth below.

Proposed Section 2393. Purpose

Existing law, California Insurance Code Sections 13810 through 13813, provides that insurers doing business in California that insured slaveholders either directly, or through a predecessor company, shall report certain information to the Commissioner, including the names of slaves and names of slaveholders found in their records. The law requires the Commissioner to provide the information to the Legislature and to make it available to the public.

This regulation states the purpose of the regulations, which is to establish standards for insurers to report information to the Commissioner under the Slavery Era Insurance Policies statutes so that the data may be provided uniformly to the Department and made available to the public.

This regulation is reasonably necessary to carry out the purpose for which it is proposed as it clearly states the purpose of the regulations and the enabling statute does not address the issue of how carriers are to report the required data to the Department.

Proposed Section 2394. Definitions

Existing law, California Insurance Code Sections 13810 through 13813, uses terminology that is not defined in the statute. The regulation defines the terms used in the statute in order to clarify their meaning so that all affected insurers will be able to determine what action or actions they must take to be in compliance with the statute.

The regulation defines the term “insurer” as any insurer licensed and doing business in California on or after January 1, 2001.

The regulation defines the term “predecessor corporation” as a corporation in the reporting insurer’s family tree that existed prior in time to the reporting corporation.

The term “family tree” is a term known to regulators and carriers and which is used in the insurance regulatory context to refer to subsidiaries or affiliates of primary insurance companies within a holding company family. *See, e.g.*, 1 Cal. Insurance Law & Practice §11-01[3][b], p.11-9, referring to reinsurance companies and 1 Cal. Insurance Law & Practice, *supra*, §12-02[1][d], referring to the insurance company clients of “captive” or semi-independent adjusting companies as companies which may be within the same “family” or “group”.

The regulation defines the term “reporting insurer”, to mean an insurer which has been designated by its holding company to submit a consolidated report which is responsive to these regulations.

The regulation defines the term “slave” as a person wholly subject to the will of another, having no freedom of action and whose person and services were wholly under the control of another, and who was in a state of enforced compulsory service to another.

The regulation defines the term “slaveholder” to include owners of slaves owners of business enterprises using slaves; owners of slave-carrying vessels or other means of transporting slaves; merchants and/or financiers dealing in the purchase, sale, or financing of the business of slaves and slavery; slave dealers and slave brokers.

The regulation defines the term “slaveholder insurance policies” as policies issued to, or for the benefit of, slaveholders to insure them against the death of, or injury to, their human property. The regulation defines the term “Slavery Era” as prior to December 5, 1865. The Thirteenth Amendment was not effective until December 6, 1865. The specific date is reasonably necessary to carry out the purpose for which is proposed in that otherwise, any policies issued or written from January through December 5 of 1865 would be excluded from the reporting requirement.

This regulation is reasonably necessary to carry out the purpose for which it is proposed as it clearly states how terms that are used within the regulation will be defined. Definitions of terms contained within the regulation are necessary for the insurance carriers that are subject to the regulations.

Proposed Section 2395. Who is required to submit a Report

Existing law, California Insurance Code Section 13812, requires insurers to submit detailed information and data related to certain insurance policies sold either directly or through a predecessor company, which were in effect during the Slavery Era.

The regulation provides that every insurer must report regarding any information that they have regarding slaveholder insurance issued during the Slavery Era and names of slaves and slaveholders.

The regulation allows a holding company to submit a consolidated report on behalf of all insurers within that holding company. This section specifies that one insurer shall be designated as the reporting insurer and specifies that insurers that file a consolidated report must comply with all other requirements of the regulations.

This regulation is reasonably necessary to carry out the purpose for which it is proposed in that it clarifies that carriers that are members of a holding company may submit one, consolidated report for all of its members. This regulation reduces the reporting burden for carriers by avoiding duplication of reporting for companies within a group, as well as reducing the Department’s burden of compilation and review of reports through consolidation.

Section 2396. Report Format

Existing law, California Insurance Code Section 13812, requires insurers to submit detailed information and data related to certain insurance policies sold either directly or through a predecessor company, which were in effect during the Slavery Era.

The regulation seeks to standardize the format for the reports and also seeks to clarify and specify exactly what information must be reported. The regulation requires the insurer to provide the name, address, and other identifying information of the insurer and the insurer's officer making the report and directs that this person shall be the contact person for purposes of this reporting requirement. The regulation requires that the report be verified as set forth in CCR Section 2683.22.

The regulation requires that each insurer provide both methodology and results of its research as to the slaveholder insurance information contained in its records, the names of slaves contained in its records, and the names of slaveholders contained in its records. The regulation states that if an insurer searches and finds no data responsive to this statute, it must so report.

The regulation specifies that reports shall be provided to the Department on paper and that the information regarding the names of slaves and names of slaveholders shall be submitted on paper and in electronic format. The regulation further specifies that reports are to be mailed to the Department's San Francisco offices.

This regulation is reasonably necessary to carry out the purpose for which it is proposed in that the enabling statute does not address the manner in which carriers will report the required data and the regulation specifies a format for data reporting which will ensure the orderly and efficient gathering and reporting of the required data.

This regulation is reasonably necessary to carry out the statute's purpose of requiring insurance companies to provide "any records of slaveholder insurance policies" to the Department by specifying that all pertinent information contained in a policy, including information regarding location of property insured, if any, shall be reported to the Department. In turn, the Department will include all reported information in a searchable database made available to the public on the Department's website.

This regulation is reasonably necessary to carry out the statutory requirement that the Department provide full disclosure to descendants of slaves in that it requires data to be reported which the public would reasonably expect to find on a Slavery Era Insurance Policy data base, that is, an identification of the insurer that issued the policy, a contact person for the insurer in the event that there are questions about the reported information, a description of the steps taken by the insurer to determine the existence and location of records or, in the alternative, the nonexistence of records, the names of slaves insured, names of slaveholders and/or other beneficiaries of policies and any other information which would identify the slave or slaveholder, including location of the insured risk and/or location of the policies' beneficiary(ies).

Section 2397. Time for submission

Existing law, California Insurance Code Section 13812, requires each insurer licensed and doing business in California to research and report to the Commissioner with respect to records and knowledge related to insurance policies issued to slaveholders and with respect to the names of slaves and slaveholders contained in such records.

This regulation is reasonably necessary to carry out the purpose for which it is proposed in that the enabling statute does not provide any deadlines for the submission of data and the regulation specifies standardized timeframes for the submission of reports. The Department has set a date of thirty days following the approval of the regulation (the regulation's effective date) as the date that carriers must submit the required information. All carriers have been on constructive notice of this statutory requirement since January 2, 2001. Further, the Department put all affected carriers on actual notice of the statutory requirement on January 2, 2001, when a letter was issued by the Commissioner to all carriers advising them of the statutory requirement. These proposed regulations were published on January 26, 2001 and notices of revisions to the regulations were mailed to all interested parties on April 26, 2001 and again on July 20, 2001. All affected carriers have had adequate notice of the statutory obligation and of the proposed regulations.

This regulation is reasonably necessary to carry out the purpose for which it is proposed in that it provides for an end date of December 14, 2001 for all carriers to complete compliance with the regulation. Companion legislation, SB1737 (Hayden) provides that University of California (UC) shall host a colloquium and that the regents shall provide a recommendation to the legislature on the economic legacy of slavery in California by January 1, 2002. The December 14, 2001 date will allow the Department to provide all gathered information to UC for its use in compliance with that statute.

Section 2398. Establishment of the Slavery Era Insurance Registry

Existing law, California Insurance Code Section 13811, requires that the Commissioner make available to the Legislature and to the public, the names of slaves and slaveholders reported by the insurers.

In order to comply with that statute, the regulation states that a Registry shall be established and that it shall be accessible to the public at the Department's Public Viewing Rooms in San Francisco and in Los Angeles and/or pursuant to some other means that the Commissioner shall deem appropriate.

DEPARTMENT OF INSURANCE'S SUMMARY AND RESPONSE TO PUBLIC COMMENTS

The Department received the following public comments:

COMMENTS MADE ON THE RECORD AT MARCH 13, 2001 PUBLIC HEARING (LOS ANGELES)

There were a number of comments made on the record at the Los Angeles hearing that either made no specific recommendation with respect to the proposed regulation or were not relevant to the proposed regulations. A number of these comments related to the issue of reparations for slavery, which is addressed by companion legislation, SB1737(Hayden) (Cal. Ed. Code Section 92615 *et seq.*) regarding the Economic Legacy of Slavery in California. In the interest of completeness, the Department lists those commenting on the reparations or other, non-related issues as follows, with a brief description of the comment, but in the interest of brevity, the Department provides no response.

Comment: Larry Aubry commented that the regulations should be broad enough to encompass the complexities surrounding the profits associated with slavery.

Response: The Department responded on the record that specific suggestions to broaden the regulations would be considered.

Comment: Mollie Bell's comment was that the proposed definition of "slave" does not include the word "black", or "African" and that the "reporting insurer" section allows for consolidated reports which would lead to numbers being "lumped up". Ms. Bell also commented that "identifying marks" of slaves should be included along with names and that the companies insured should also be cross-referenced in the registry and that the information provided to the Department should be disseminated to certain local community groups, newspapers, service organizations and reparations organizations.

Response: The Department responded on the record that the purpose of allowing consolidated reports was to expand the number of insurance companies that will be providing information to the Department. The Department further responded on the record that the information compiled by the Department in the registry will be disseminated via the Internet and will be available in the Department's viewing rooms in Los Angeles and San Francisco. The Department also responded on the record that it has jurisdiction over insurance companies only. Although Ms. Bell's comment regarding the race of slaves and of persons potentially receiving reparations payments is not relevant to the substance of the proposed regulations, the Department responded on the record that, in fact, slave populations consisting of other races have existed, but that the statute did not specify a particular race and that the Department is unable to expand the scope of the statute through the regulation.

Comment: Patricia Benefield's comments were related to burial insurance and were not relevant to the regulation, therefore, the Department makes no response.

Comment: Shirley Blake asked how she could continue to be aware of the progress of the regulations and whether or not workshops would be conducted to help people better understand the process.

Response: The Department responded on the record that there would be no workshops conducted, but that copies of the Notice of Proposed Regulatory Action were available with the names, addresses and telephone numbers of Staff Counsel for the Department.

Comment: Connie Brown's comments related to written comments submitted by Deadria Farmer-Paellman and David Paterson.

Response: Ms. Farmer-Paellman's and Mr. Paterson's written comments are addressed separately herein.

Comment: Richard Byrd commented that the regulations contained no penalties for noncompliance.

Response: The Department responded on the record that there are general fines and penalties for noncompliance with an Order of the Commissioner which can be used in the event of carrier noncompliance.

Comment: Richelle Callies' comment was how will African-American know that the names found are the names of ancestors and how will African-Americans be compensated?

Response: The Department responded on the record that, with respect to the genealogical issue, the best that can be done is to locate the last known whereabouts of a slave and identify that person by location, the name available and the name of the slaveowner. The Department also responded on the record that the compensation issue is not within the Department's purview and jurisdiction.

Comment: Dr. Firpo Carr commented that there are no penalties in the regulation and spoke generally on the issue of reparations.

Response: The Department responded on the record that the statutory imposition of penalties is a legislative issue.

Comment: Lynn Cross' comment was unrelated to the proposed regulations, but rather addressed a general issue of the level of information available to the public, therefore, the Department provides no response.

Comment: Terry Cross' comment was unrelated to the proposed regulations, but rather addressed a general issue of the level of information available to the public, therefore, the Department provides no response.

Comment: Jamil Duerson asked generally how the information reported to the Department would be made available to the public and specifically, how the information would be made available to young people.

Response: The Department responded on the record that the information gathered pursuant to the regulations would be made available in the Department's public viewing rooms in San Francisco and Los Angeles and on the Department's website.

Comment: Summer Duerson asked how the information would be made available to young people.

Response: The Department responded on the record that the information will be made available in the Department's public viewing rooms in San Francisco and Los Angeles and on the Department's website.

Comment: Frank Elmore's comments were not directed to the substance of the regulations, therefore the Department makes no response.

Comment: Terri Green's comment was that a fact-finding panel should be appointed or scholars should be used to review the records provided pursuant to the regulation

Response: The Department responded on the record that the Regents of UC would determine who would be part of the scholarship effort as UC is responsible for the implementation of Cal. Ed. Code Section 92615 *et seq.*

Comment: Morris Griffin commented generally on additional information that his group (National Coalition for Reparations and Economic Wealth) wanted to know. They wanted to know how many slaves were insured and how slaves lost their lives, as well as the names and number of insurance companies and farmers involved in insuring slaves and the number of businesses existing during the Slavery Era.

Response: The Department responded on the record that the regulations provide for information on existing and predecessor insurance companies issuing Slavery Era insurance policies only.

Comment: Lorna Hawkins asked generally how slaves were insured and whether or not any insurance companies were represented at the hearing.

Response: The Department responded on the record that insurance companies had been in contact with the Commissioner prior to the hearing regarding the regulations and that insurance documents uncovered to date referred to cargo insurance of individual slaves based on age and condition. The Department responded further that the legislation provides that the Department is to provide the information it receives to the colloquium and that the Department has only the jurisdiction granted by the legislature.

Comment: Lynette Hill asked how all of the companies involved in slavery were going to be made to divulge information and whether or not the Freedom of Information Act applied to the data.

Response: The Department responded on the record that it has the authority to collect data from insurance companies here in California and the California Public Records Act would apply to the data submitted to the Department.

Comment: Merritt Holloway commented that the penalties for noncompliance should be in the trillions of dollars. Mr. Holloway further commented that there should be an outer deadline for insurers to comply with the regulations.

Response: The Department responds that the enabling statute does not include any provision for penalties. The regulations were amended to provide for an outer time limit of December 14, 2001.

Comment: Dr. David L. Horne commented that there is no other group (besides African slaves) to whom the 1745-1865 time period referenced in the legislation applies. Dr. Horne commented further that the business of slavery involved slave agents, suppliers, retailers, wholesalers, dealers, auctioneers, slave catchers, slave clothiers as well as real estate brokers, bankers and insurers and that the regulations should be expanded to reflect all those involved. Dr. Horne asked whether or not the insurance industry would be made aware of the connection between the regulations and the research colloquium. He also asked whether or not the Department would prosecute insurance companies that do not comply with the regulations and whether or not there would be a mechanism for elaboration or clarification of insurer reports which are inadequate. Dr. Horne asked whether the regulations would call for information regarding the redlining of African American neighborhoods by insurers.

Response: The Department responded on the record that information regarding the colloquium was sent to all affected carriers along with the Notice of Proposed Regulatory Action. The Department responded that it has an administrative mechanism to prosecute carriers that do not comply with the regulation, and that the regulations allow the Commissioner to request further information from any carrier regarding its report pursuant to the statute and regulation. The Department also responded on the record that the scope of this statute does not encompass modern day redlining practices, but that the Department is working on issues related to that practice. The definition of “slaveholder” has been amended to include “owners of business enterprises using slaves”. The definition of “slaveholder insurance policies” has been amended to include “for the benefit of slaveholders”.

Comment: Reverend Norman Johnson commented generally that the regulations should be broadened to encompass the greatest amount of information as well as loss of property (slaves) and commercial policies. Reverend Johnson also commented that the “Slavery Era” should be expanded to before 1745 and after 1865.

Response: The Department responded in part to this comment on the record. The Department has partially adopted this comment by amending Section 2394(h) to refer to the Slavery Era as “prior to 1865”. All insurance carriers are on notice of all Department regulations. The Department’s view is that it is not necessary to specify all lines of insurance that may be affected.

Comment: Alice Jones’ comments were related to the issue of “institutionalized slavery” and were not relevant to the regulation. Therefore, the Department makes no response.

Comment: The comments of Celes King III were not relevant to the substance of the proposed regulation, therefore the Department provides no response.

Comment: Tammy Lee commented that information received from insurance companies should be compared to existing records, such as tax records. Ms. Lee also commented that once the information is available, that community organizations and technology should be used to disseminate the information. Ms. Lee also commented that the public comment period should be extended.

Response: The Department responded on the record that it has no authority to request tax records from other jurisdictions. The Department said that it would consider an extension of the public comment period. The regulations were amended, pursuant to the public comments received during the initial 45-day comment period, and those amendments were circulated to interested parties for an additional 15-day comment period.

Comment: Anthony Morris' comment was unrelated to the proposed regulations, therefore, the Department provides no response.

Comment: Mshinda Nyofu commented that the public comment period should be expanded.

Response: The Department responds that the regulations were amended, pursuant to the public comments received during the initial 45-day comment period and were circulated to interested parties for an additional 15-day comment period.

Comment: J. Peoples commented that the \$50,000 fine was inadequate.

Response: As the enabling statute does not contain a penalties provision, the amount of penalty which the Department may assess for noncompliance with the regulations is pursuant to the Commissioner's plenary authority to enforce the provisions of the insurance code and the regulations. While penalties are generally determined on a case-by-case basis, it is the Department's view, that a fine or penalty of \$50,000 could be supported for noncompliance with these regulations.

Comment: Erik Pillow's comment was that disclosure of the information should be mandatory and abundant and that there should be an outer limit to the time that insurers have to provide data.

Response: The Department responded on the record that the reason that the regulations contain a provision for progress reports from insurers is so that insurers which are diligently looking through voluminous files for documents are not penalized for that effort, but that the enabling statute does not give the Department the authority to audit insurers. The regulations were amended to provide for an outer time limit of December 14, 2001.

Comment: A. Seals Routhen commented generally on the issue of reparations.

Comment: Zaynab Samateh asked whether or not slaves were insured in the middle passage.

Response: The Department responded on the record that slaves were insured in transport as cargo.

Comment: Teddie Thomas' comments were not relevant to the regulation, therefore, the Department makes no response.

Comment: John Thompson commented generally that insurer compliance would be enhanced if there were penalties in the regulation and made general comments about reparations.

Response: The Department responds generally that there is no statutory authority for penalties in the regulations but that fines and penalties for noncompliance with any Order of the Commissioner would apply to this statute.

COMMENTS MADE ON THE RECORD AT MARCH 16, 2001 PUBLIC HEARING (SAN FRANCISCO)

Comment: Kali Akuno commented that he would like more information about the work of the Department on this issue prior to the colloquium.

Response: The Department responded on the record that information would be provided to the colloquium and to UC in whatever form was requested and that the information would be made available to the public before the colloquium.

Comment: Marion J. Armstrong commented that it was important that data be gathered at this time to address this issue and that it is important to address the issue of historical injustice against African-Americans. Ms. Armstrong also commented that the hearing should have been held in the communities, which would allow more participation from the public.

Response: The Department responded on the record that the Department supported the exchange of information at the local communities' level and that the Department would provide information, if requested, for such events. The Department also responded on the record that the information received would be disseminated as broadly as possible and would be made available in the Department's public viewing rooms in San Francisco and Los Angeles in an appropriate setting and that the Department will try to put the information on the internet as quickly as possible along with information about the colloquium of scholars.

WRITTEN COMMENTS

Comment of State Farm (written comment submitted 2/15/01)

Comment: At the end of §2396(a)(3) add that where neither the insurer nor any of its affiliates or predecessor corporations engaged in the business of insurance until after the Slavery Era, a statement to that effect shall suffice.

Response: The Department declined to adopt this recommendation. Pursuant to the current regulation insurers need to search to see what Slavery Era insurance documents are in their archives. If they were not in business during the Slavery Era then they could not have any documents. A report to that effect is still required.

Comment of David Edwin Paterson (written comments submitted 3/13/01)

Patterson Comment 1: The definition of "slaveholder" should include the "named policyholder or beneficiary of an insurance policy issued to insure slaves against death or injury".

Response: The Department declined to adopt this recommendation. The purpose of defining the term "slaveholder" is to provide for the maximum amount of available information to be gathered and reported to the Department and then made available to the public. Mr. Paterson's suggested amendment is contained in the definition of "slaveholder insurance policies" with reference to the type of policy issued. To the extent that such policies are uncovered, the

attendant information about the named policyholder would be provided pursuant to Section 2396(a)(4) Names of Slaves.

Patterson Comment 2: The definition of “slaveholder insurance policies” should read “policies issued to any person...to insure them against the death of, or injury to, any slave property”.

Response: The Department adopted this recommendation. The current definition was amended to omit the word “their” in “~~their~~ human property”.

Patterson Comment 3: As slaves would often keep their surnames secret, it is unreasonable to require insurers to list slaves by surname.

Response: The Department notes that no specific recommendation was made with respect to this section. Insurers are only required to provide the information that they have. If they do not have the last name of the slave, then they will not be able to report that piece of data.

Patterson Comment 4: A separate list of slave names, in isolation, will not permit any individual on the list to be identifiable, either historically or genealogically. Slaves are best identifiable when their names are linked to the name of a slave owner.

Response: The Department adopted this recommendation. Section 2396(a)(4) has been amended to require that the name of the slaveholder, policyholder, and/or beneficiary be listed alongside the name of each slave.

Patterson Comment 5: Either verbatim transcriptions of all documents regarding slave insurance or copies of all such documents in microfilm or scanned format or photocopies should be submitted.

Response: The Department declined to adopt this recommendation. Section 2396(a)(6) requires copies of all documents to be submitted and requires that if a document is written in a language other than English, that a certified translation be submitted as well.

Patterson Comment 6: The registry regulation should delete the lists of slave and slaveholder names, as they will be contained in the Slavery Era insurance policy information.

Response: The Department declined to adopt this recommendation. The Department’s view is that the statute calls for the registry to contain both the names of slaves as well as the names of slaveholders along with other insurance documents related to Slavery Era insurance policies. The Department believes that separate lists of the names of slaves and slaveholders will be more accessible to the public than culling such information from the original documents.

Comments of American Insurance Association (AIA) (written comments submitted 3/16/01)

AIA Comment 1: The definition of Slavery Era should not be 1745-1865 as this time period is prior to the existence of the United States and this casts legal doubt on the validity of a regulation that would retroactively require reporting of information from this period. This time period pre-dates California’s statehood in 1850.

Response: The statute calls for the reporting of information by insurers that do business in California today. A definition of “Slavery Era” is provided to assist carriers in culling through hundreds of years of documents. If slaves were being bought and sold and if insurers that currently do business in California today were insuring those slaves, then it does not matter what government controlled the territory on which the slaves lived. Finally, the Department notes that AIA did not suggest an alternative time period.

AIA Comment 2: In the definition of “Slavery Era”, the regulation should not include “information that is otherwise responsive to this regulation...where events occurred after the abolition of slavery in the United States” because this would leave the reporting period open-ended.

Response: The Department has adopted this recommendation with respect to the inclusion of “information otherwise responsive to this regulation”. The regulation has been amended to delete that language. The new definition of “Slavery Era”, §2394(h), is “prior to 1865”.

AIA Comment 3: The definition of “slaveholder” includes owners as well as those involved in the commerce of the slave trade. As slavery was legal in the United States prior to 1865 it would be virtually impossible and prohibitively costly for California insurers to search their records (“to the extent such records still exist”) for all persons qualifying as slaveholders per the definition.

Response: The Department declined to adopt this recommendation. AIA argues that it would be burdensome to search for records that do not exist. On the contrary, it is the Department’s view that the search through non-existent records should be relatively brief. To the extent that records do exist, and once a carrier determines that such existing records relate to the relevant time period, they need to be searched. The purpose of the statute is to make available to the public information regarding the business of insuring slaves. As slave insurance was written to protect the interests of merchants, dealers and shippers of slaves, those records must be included in the insurers’ review of their existing records. For example, slave dealers of various types owned slaves until they could be sold and collected by their ultimate owners. Slaves were not kidnapped, chained and shipped on consignment...they had owners.

AIA Comment 4: The definition of “slave” is too broad as it would include jailed criminals and prisoners of war. The definition should focus on African American slaves.

Response: The Department declined to adopt this recommendation. The term “slave” is as defined by *Webster’s New World Dictionary*, Third College Edition. Setting aside the issue of whether or not criminals and POW’s have historically been insured, it is the Department’s view that “criminals” and “prisoners of war” are not readily confused with “slaves”. The Department notes that no alternative definition was suggested. Although some testimony was provided at the March 13, 2001 hearing on the issue of the intent of the author as to African-Americans, it is the Department’s view that the purpose and the intent of the regulation is clear without the inclusion of additional, specific references to a defined group.

AIA Comment 5: Taken together, the definitions of “Slavery Era”, “slave”, and “slaveholder” may unintentionally cover a broad spectrum of life and commercial insurance policies issued prior to 1865 which would result in an avalanche of insurance information irrelevant to the purpose of SB2199. “AIA does not favor a regulatory process that results in the production of information of little historical significance or that does not fulfill the central purpose of SB 2199”.

Response: The Department declined to adopt this recommendation. The Department’s view is that the definitions are sufficiently clear to allow carriers to comply with the statute and the regulation. The purpose of the statute is to make available to the public information regarding the insuring of slaves and the names of slaves and slave owners. If, in fact, as AIA suggests, the insurance of slaves covers a broad spectrum of life and commercial insurance policies issued prior to 1865, resulting in an avalanche of insurance information, this would be just what the statute is intended to achieve. If insurers currently doing business in California insured slaves

and slaveholders during the Slavery Era, either directly or through a predecessor company, the information these insurers may have in their archives would be relevant and clearly within the ambit if the statute.

AIA Comment 6: The definition of “predecessor corporation” raises concerns about the propriety of collecting information on insurance policies issued outside of California involving persons that did not do business in California and who did not reside in California.

Response: The Department has declined to adopt this recommendation. The statute and regulations clearly encompass the collection of information regarding insurance on African slaves brought to what is currently the continental United States by persons dealing in slaves and which was written by insurers currently doing business in California or their predecessor companies.

AIA Comment 7: The regulations should not cover insurance on slaves around the world and should not cover slavery after the late 1880’s such as Nazi slave laborers.

Response: The Department declined to adopt this recommendation. The statute makes reference, at (a) to insurance policies from the Slavery Era which have been discovered in the archives of several insurance companies, documenting insurance coverage for slaveholders for damage to or death of their slaves, issued by a predecessor insurance firm. Further, there is some testimony on the record, from former State Senator Hayden’s aide, Connie Brown, that the statute was intended to apply to African-American slaves only. However, that would not eliminate any Slavery Era policies issued by an American predecessor firm on the lives of African slaves shipped to an international port. If such policies existed, they would be covered by the statute and should be produced. No mention is made in the statute or in the regulation of slaves around the world and it is the Department’s view that the regulation does not broaden the scope of the statute. The statute also refers to the “Slavery Era” and the regulations have been amended to define the “Slavery Era” as “prior to 1865”, as legal slavery in the United States was abolished in 1865.

AIA Comment 8: The reporting requirements are too detailed as they require insurers to describe the research that they did and the statute requires only the data found.

Response: The Department declined to adopt this recommendation. A requirement that insurers report data is meaningless without an explanation of where and how they searched in order to collect such data. The Department needs to be able to determine whether the search was sufficient to turn up whatever data may exist.

AIA Comment 9: The regulations are also too detailed as the statute requires the reporting of the names of slaves and the regulations also require the county where the slave lived.

Response: The Department declined to adopt this recommendation. The statute is clearly intended to assist descendants of slaves in tracing their family histories. As slaves were listed usually by first name only, in order for the names of slaves to be meaningful for people trying to trace their ancestry, it is necessary to have additional information, such as location, for identification.

Comments of the Southern Christian Leadership Conference of Greater Los Angeles
(written Comments submitted 3/17/01)

SCLC Comment 1: The definition of “slave” should be expanded by taking out the word “wholly” and by including language that specifies that the statute is to apply to chattel slavery and indentured servitude and to Africans, as well as Native Americans and persons of Latino, Asian, Pacific Islander and European descent as well.

Response: The Department declined to adopt this recommendation. The term “slave” is as defined by Webster’s New World Dictionary, Third College Edition. While there is some testimony on the record, from former State Senator Hayden’s aide, Connie Brown, that the statute was intended to apply to African-American slaves only, the Department’s view is that the purposes of the statute are not served by this suggested amendment. Although some evidence has been produced from insurance companies that American insurers insured African slaves on American soil during the Slavery Era, there has been scant evidence of insurance of non-African slaves by American insurers. Finally, it is the Department’s view that even though chattel slavery and indentured servitude were and are deplorable conditions, they are not fairly covered by the enabling statute.

SCLC Comment 2: The definition of “slaveholder” should be expanded to reflect that slavery was carried out by the owners of slave-carrying vessels and by the businesses that used slaves as well as by the owners of plantations. The Southern Christian Leadership Conference claims there is evidence that after the civil war, governmental entities may have owned slaves, and that the definition should be expanded to include them as well.

Response: The Department has adopted this recommendation in part. Section 2394(f) now refers to “owners of business enterprises using slaves”.

SCLC Comment 3: The definition of “slaveholder insurance policies” should specify that it is not limited to life insurance policies.

Response: The Department has adopted this recommendation. Section 2394(g) has been amended to refer to policies issued to “or for the benefit of” slaveholders. All insurance carriers are on notice of all Department regulations. The Department’s view is that it is not necessary to specify all lines of insurance that may be affected.

SCLC Comment 4: The definition of “Slavery Era” should be amended to cover the period from 1492 to the present.

Response: The Department has partially adopted this recommendation. Section 2394(h) has been amended to read “prior to 1865”. There has been no evidence that slaves were insured after the abolition of slavery in the United State in 1865. However, if insurers, in searching their records, find evidence of such insurance after 1865, they are urged to voluntarily submit such records. It is the Department’s view that the statute cannot be fairly read to encompass modern day indentured servitude and peonage in areas such as prostitution, sweatshops, domestic service and migrant farm labor.

SCLC Comment 5: Add to Section 2396(a)(1) that insurers submitting a consolidated report must submit the telephone, fax, website, etc. for the other insurers included in the report.

Response: The Department has declined to adopt this recommendation. Section 2396(a)(1) provides that this information must be reported with respect to the reporting insurer. The reporting insurer could provide any additional information regarding a particular report upon request.

SCLC Comment 6: Section 2396(a)(3) regarding research methodology should be amended to require the insurer to explain any limitation of its research based on any assumptions employed by the insurer in that research, and shall also list the names and titles of the individuals who conducted the research.

Response: The Department has declined to adopt this recommendation. The Department's view is that this suggested amendment is too conceptual to serve the purpose of the regulation to clarify and make specific the provisions of the statute. The Department's view is that the suggested amendment does not advance the purposes of the statute and that the existing provisions of Section 2396(a)(3) are adequate.

SCLC Comment 7: The names of slaves and names of slaveholders should be separately listed for each insurance policy identified by the insurer. In addition, for each such policy, the insurer shall state the period of coverage, type of coverage, name of the insurer as well as any claims made on the policy. The Comment also suggests that the insurers be required to submit summaries of the insurer's book of policies, the insurer's underwriting and rating standards, financial records of premium received and any analysis of the business of issuing such policies.

Response: The Department has declined to adopt this recommendation. The names of slaves and slaveholders will be more useful and accessible to the public if listed as set out in the regulations than if separated out per policy. The Department believes the remaining suggestions to be beyond the scope of the statute.

SCLC Comment 8: The regulation should set a specific final date for submission of the reports, as an open ended date will invite a long series of progress reports.

Response: The Department has adopted this recommendation. Section 2397 has been amended to require that information shall be submitted "no later than December 14, 2001".

SCLC Comment 9: The Commissioner should seek a legal opinion on the remedies available for insurers' "ill-gotten profits from slavery".

Response: The Department notes that this is not a suggested amendment to the regulations. The Department has indicated to the Regents of the University of California, who are responsible for the implementation of SB 1737, the companion bill to SB2199, that the Department is available to assist UC in any capacity with respect to UC's assembling a colloquium of scholars to draft a research proposal to analyze the economic benefits of slavery.

Comments of National Coalition of Blacks for Reparations in America (N'Cobra) & Malcolm X Bay Area Organizing Committee (written comments submitted 3/21/01)

N'Cobra Comment 1: Amend 2396(a)(3) to say that the insurer shall list all facilities and resources used in its research and that insurers state how and why they selected the research methodologies that they employed.

Response: The Department declined to adopt this recommendation, as this is already covered in the regulations. Insurers are directed to provide "a description of the methods employed to identify and compile the records and information that are responsive to this regulation". Facilities and resources would be included in this description.

N'Cobra Comment 2: Insurers should be required to state the race/ethnicity of their researchers to "help minimize bias in the research".

Response: The Department declined to adopt this recommendation. There was no evidence presented and there is no reason to believe that bias or lack of bias can be determined based upon race. Further, it would be inappropriate for the Department to promote this view.

N'Cobra Comment 3: Amend the definition of “slave” to say that slaves received no compensation and enslavement was wholly involuntary.

Response: The Department declined to adopt this recommendation. The term “slave” is defined as one in a state of “forced, compulsory service”. This definition encompasses lack of compensation and volition.

N'Cobra Comment 4: Amend the definition of “Slavery Era” to extend from 1619 to 1865.

Response: The department considered this comment and while not adopting it *in toto*, the regulations were amended to define the “Slavery Era” as “prior to 1865”.

N'Cobra Comment 5: Amend the definition of the term “predecessor corporation” to include the sibling, subsidiary and holding companies of the reporting insurer.

Response: The Department declined to adopt this recommendation. The statute requires that insurers report Slavery Era policies written either by the company or by a predecessor company. There is no statutory authority to require reporting of policies written by sibling, subsidiary or holding companies.

N'Cobra Comment 6: If there are inconsistencies in the reports submitted, independent auditors should review the documents in order to correct the record. Also, historically affected organizations and communities should be involved in the selection of the independent auditors.

Response: The Department declined to adopt this recommendation. If the Department has reason to believe that the insurer has lied or misrepresented information presented in the reports, the Department will investigate using Department resources.

N'Cobra Comment 7: If omissions, misrepresentations, etc., are uncovered, insurers should be required to submit additional reports to address those problems.

Response: The Department declined to adopt this recommendation. If there is evidence of intentional omissions and/or misrepresentations, the Commissioner has other statutory means at his disposal to investigate and ensure that companies gather and report the required information.

N'Cobra Comment 8: Add an enforcement section that outlines the various penalties that would be imposed for failure to cooperate.

Response: The Department declined to adopt this recommendation. There is no statutory authority for the imposition of penalties in these regulations. The Commissioner has other statutory authority to assess fines and penalties for noncompliance if appropriate.

N'Cobra Comment 9: The registry should be distributed to public and school libraries, public access televisions stations, African-American press outlets and churches and other community organizations.

Response: The Department declined to adopt this recommendation. The regulations provide for the registry to be placed in the Department's public viewing rooms in Los Angeles and San Francisco. Moreover, the Commissioner retains the discretion to choose additional methods of distribution, including the internet, as appropriate, to provide maximum public access to the information.

Comments of the California State Conference of the National Association for the Advancement of Colored People (written comments submitted April 24, 2001)

NAACP Comment 1: The change made to Section 2394 of the regulations would omit the reporting of information regarding events which transpired after the abolition of slavery. Slavery did not end on a specific date and we believe that slaves were held after 1865.

Response: The Department declined to adopt this recommendation. The Department has no evidence that slaves were insured after the abolition of slavery in the United State in 1865. However, if insurers, in searching their records, find evidence of such insurance after 1865, they are urged to voluntarily submit such records.

Comments of the American Insurance Association

(written comments submitted May 1, 2001)

AIA Comment 1: AIA incorporates by reference and reiterates the comments it filed previously on March 16, 2001.

Response: The Department incorporates by reference and reiterates the responses it made to AIA's comments dated March 16, 2001.

AIA Comment 2: The change made to Section 2394(a) is inconsistent with the statute. CIC §13810 only requires information from insurers licensed and doing business in the state. The regulation deleted the licensing requirement.

Response: The Department made this change in the version of the regulations sent out with the July 20, 2001 Notice of Availability of Changed Text.

Comments of the Southern Christian Leadership Conference

(written comments submitted May 1, 2001.)

SCLC Comment 1: Section 2394(h) should be redrafted to reflect an open ended definition of "slavery-era" and to make clear that insurers will be required to disclose policies underwritten on enslaved persons regardless of race or date of enslavement.

Response: The Department declines to make this change. There has been no evidence that slaves were insured after the abolition of slavery in the United State in 1865. However, if insurers, in searching their records, find evidence of such insurance after 1865, they are urged to voluntarily submit such records. It is the Department's view that the statute cannot fairly be read to encompass modern day indentured servitude and peonage in areas such as prostitution, sweatshops, domestic service and migrant farm labor and that the statute and the regulation are clear as to what they cover.

SCLC Comment 2: Section 2394(e) should be drafted to reflect a broader definition of the term “slave” to eradicate any impression that the statute does not require the disclosure of information regarding the insuring of non-African slaves.

Response: The Department declines to make this change as it believes that the language of the regulation is clear.

SCLC Comment 3: Section 2394(f) should be redrafted to reflect a broader definition of the term slaveholder that includes slave traders and Governmental entities.

Response: The Department already adopted this recommendation in part. Section 2394(f) refers to “owners of business enterprises using slaves”. The Department believes that this language covers the issues raised in this comment.

SCLC Comment 4: Section 2396(a)(3) “research methodology” should be drafted to provide a mechanism for insuring that the Department receives full disclosure by adding the phrase “if the insurer limits the scope of its research in any way for any reason, the research shall describe both the limitations employed and the insurers’ reasons for imposing such limitations.”

Response: The Department declines the recommendation of this comment. As explained the last time the SCLC submitted this comment, the Department’s view is that the suggested amendment does not advance the purposes of the statute and that the existing provisions of Section 2396(a)(3) are adequate.

SCLC Comment 5: The Commissioner should seek a legal opinion on the remedies available to the descendants of enslaved persons for insurers’ “ill gotten profits.”

Response: The Department declines the recommendation of this comment. As explained the last time the SCLC submitted this comment, the Department notes that this is not a suggested amendment to the regulations. The Department has indicated to the Regents of the University of California, who are responsible for the implementation of SB 1737, the companion bill to SB2199, that the Department is available to assist UC in any capacity with respect to UC’s-assembling a colloquium of scholars to draft a research proposal to analyze the economic benefits of slavery.

Comments of the Southern Christian Leadership Conference

(written comments submitted August 6, 2001)

SCLC Comment 1: Proposed Circular SEIR-2001 conflicts with the statute and the regulations. The statute and the regulations require the reporting of policies *issued or written* during the slavery era and the Circular calls for data regarding policies *in effect* prior to 1865.

Response: The Department accepts the recommendation made in the comment. The Circular will be changed.

SCLC Comment 2: Section 2394(g) (definition of slavery era) and the Circular should be changed to reflect the fact that the 13th Amendment took effect on December 5, 1865. As the regulation is currently written it would not capture data regarding policies written from January 1, 1865 through December 5, 1865.

Comment: The Department accepts the recommendation made in the comment. The language of the regulation will be clarified to include reporting regarding policies written prior to December 5, 1865.

IDENTIFICATION OF STUDIES AND REPORTS

The Department of Insurance did not rely upon any technical, theoretical and/or empirical study, report or similar document in proposing this regulation.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The Commissioner has determined that the adoption of these regulations does not mandate the use of specific technologies or equipment.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS:

The proposed regulation would not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts which would require reimbursement under Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

COST OR SAVINGS TO STATE AND LOCAL GOVERNMENT / FEDERAL FUNDING:

There will be no direct cost or savings to any local agency, state agency or school district from the proposed regulations. The proposed regulation will not affect federal funding to the State.

CONSIDERATION OF ALTERNATIVES

The Commissioner has not identified any alternatives that would be more effective or as effective and less burdensome to affected persons.

INCORPORATION BY REFERENCE OF DOCUMENTS

The Department has identified Circular SEIR-2001 in the text of the Regulations at Section 2396. This form will be provided by to affected carriers for the purpose of standardizing the data response to the regulations. The form will also be made available on the Department's website. The form is not incorporated in full into the regulations due to impracticality. In the event that carriers are, due to technical issues, unable to comply with the deadlines contained in the form, the regulation would have to be amended. Incorporating the form by reference allows the Department the flexibility to accommodate carriers who are making a good faith effort to comply with the regulations.

IMPACT ON SMALL BUSINESS

The regulations will have no impact on small business.

Dated: August 20, 2001

HARRY W. LOW, Insurance Commissioner

By: _____
Steven J. Green
Chief Counsel

